

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CELIA DE LEON,

Plaintiff,

vs.

**PERFORMANT RECOVERY, INC.,
fka DIVERSIFIED COLLECTION
SERVICES, INC.; and DOES 1 through
10, inclusive,**

Defendant.

Civil Action No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMPLAINT

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff, Celia De Leon (hereinafter "Plaintiff"), an individual consumer, against, Performant Recovery, Inc., fka Diversified Collection Services, Inc. (hereinafter "Defendant"), for violations of both the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and the Texas Debt Collection Practices Act, § 392 *et seq.* (hereinafter "TDCPA"), which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff, Celia De Leon is a consumer, a natural person allegedly obligated to pay any debt, residing in Harris County, in the state of Texas.

4. Defendant, Performant Recovery, Inc., fka Diversified Collection Services, Inc. is a foreign corporation engaged in the business of collecting debt in this state with its principal place of business located in Alameda County, in the state of California. The principal purpose of Defendant is the collection of debts in this state and Defendant regularly attempts to collect debts alleged to be due another.

5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

6. Upon information and belief, within one year prior to the filing of this complaint, Defendant placed collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt owed under an account number.

7. The debt that Defendant is attempting to collect on is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

8. Upon information and belief, Defendant began contacting Plaintiff and placing collection calls to Plaintiff sometime prior to September 25, 2012.

9. Upon information and belief, within one year prior to the filing of this complaint, Defendant has threatened to sue Plaintiff itself, when it does not have the requisite legal standing to do so.

10. As a result of the acts alleged above, Plaintiff suffered emotional distress resulting in her feeling stressed, amongst other negative emotions.

V. FIRST CLAIM FOR RELIEF

11. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

12. Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- (a) Defendant violated §1692e(5) of the FDCPA by threatening to take action that it did not intend to take; and
- (b) Defendant violated §1692e(10) of the FDCPA by using false, deceptive, or misleading representation or means in connection with the collection of Plaintiff's alleged debt; and
- (c) Defendant violated §1692f of the FDCPA by using unfair or unconscionable means in connection with the collection of an alleged debt.

13. As a result of the foregoing violations of the FDCPA, Defendant is liable to the Plaintiff, Celia De Leon, for declaratory judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney fees.

VI. SECOND CLAIM FOR RELIEF

14. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

15. Defendant violated TDCPA § 392. Defendant's violations of TDCPA § 392 include, but are not limited to the following:

- a) Defendant violated TDCPA § 392.304(14) by representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business.

16. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

17. As a result of the above violations of the TDCPA § 392, Defendant is liable to Plaintiff, Celia De Leon, for injunctive and declaratory relief and for actual damages, statutory damages, and attorney fees and costs.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant Performant Recovery, Inc., fka Diversified Collection Services, Inc., for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
declaratory and injunctive relief for Defendant's violations of the TDCPA; and
- B. Actual damages; and
- C. Statutory damages pursuant to 15 U.S.C. § 1692k; and
- D. Statutory damages pursuant to TDCPA § 392; and
- E. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k, TDCPA § 392; and
- F. For such other and further relief as the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE, that Plaintiff Celia De Leon demands trial by jury in this action.

DATED: May 06, 2013

RESPECTFULLY SUBMITTED,

By: /s/ Kimberly A. Lucas
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